look like Exhibit D1. He also stated that he explained to her that Exhibit D1 was for the purpose of obtaining planning permission to regularise the unauthorised structures. On his evidence it seems to me quite clear that the first plaintiff has not been candid about Exhibit D1 and that, in the circumstances, she cannot be said to have carried out her obligations under covenant (ii) of paragraph 4. I accept the evidence of the architect, D.W.2, who clearly explained to her what she was required to do.

In the circumstances, if there was any breach by the defendant of covenant (ix) about submitting plans for approval of the authorities, the first plaintiff contributed to the breach by failing in the first place to carry out her obligations under covenant (ii) of paragraph 4 of the landlords' covenants.

It is perhaps unfortunate that the defendant did not seek legal advice earlier as to his obligations under covenant (ix) in the light of the first plaintiff's attitude if he genuinely intended to fulfil his obligations as a tenant in actual possession of the premises would have done. On the whole, however, I do not propose to regard him as having been in breach of covenant (ix) because of my finding that the first plaintiff refused to sign Exhibit D1 despite the architect's advice.

In view of my finding that the lease was never renewed and that covenant (iv) has been contravened by the defendant, it follows that judgment will have to be entered for the plaintiffs for recovery of possession of the premises in question with costs which, in the exercise of my discretion, I fix at two-thirds of the total taxed costs taking into consideration the facts relating to the adjournment of the hearing before Buttrose J. on 28th November, 1967 as well as the fact that the defendant has succeeded in refuting breach of covenant (ix).

As to damages of $55,790 claimed by the plaintiffs in their "damages submission", Exhibit D.S., I consider that that amount should be reduced by half at least in view of the conduct of the plaintiffs in refusing to sign the plan — Exhibit D1 and thereby failing to mitigate damages and also the fact that in a letter (AB68) dated 15th January, 1969 to Messrs. P. T. Wong & Company, the plaintiffs' solicitors offered to settle the matter on payment of arrears of rent and costs — which offer was unfortunately not accepted. Moreover *mesne* profits claimed have not taken into account an amount for water, light and electricity of which the defendant was entitled to claim deduction. I will therefore allow damages in the round sum of $27.000 which will include rent and *mesne* profits up to date.

Judgment will accordingly be for the plaintiffs as follows:—

1. Damages at $27,000.
2. Possession.
3. Two-thirds of their taxed costs.

Judgment for the plaintiffs.

Solicitors: *Drew & Napier; P. T. Wong & Co.*

LIM KEAN v. CHOO KOON

[O.C.J. (Yong J.) October 31, 1969]

[Kuala Lumpur — Civil Suit No. 561 of 1966]

Limitation — Date when cause of action accrues — Order of Rent Assessment Board fixing rent — Claim for recovery of excess of rent — Control of Rent Ordinance, 1956, s. 3(4) — Limitation Ordinance, 1953, s. 6(1)(d).

Landlord and Tenant — Rent — Claim for recovery of excess rent — Limitation — Control of Rent Ordinance, 1956, s. 3(4).

The plaintiff claimed for recovery of excess rent paid to his landlord. An application had been made to the Rent Assessment Board and an order was made by the board on February 15, 1966 fixing the maximum recoverable rent at $50. The plaintiff claimed the excess paid from November 15, 1957 to January 31, 1966. The defendant contended that the claim was barred by limitation.

Held: the period of limitation in this case commenced to run from the date of the order of the Rent Assessment Board which was the date when the cause of action accrued.

Cases referred to:-

(1) *Cooke* v. *Gill* (1873) L.R. 8 C.P. 107, 116.

(2) *Read* v. *Brown* (1888), 22 Q.B.D. 128, 131.

(3) *Barton* v. *North Staffordshire Railway Co.* (1888) 38 Ch. D. 458.

(4) *Welch* v. *Bank of England & Ors.* [1955] Ch. 508, 544,

(5) *West* v. *Gwynne* [1911] 2 Ch. 1, 15.

(6) *Re Snowdon Colliery Co. Ltd.* (1925), 94 L.J. Ch. 305, 308.

(7) *Lauri* v. *Renad* [1892] 3 Ch. 402, 421.

(8) *Re Welsh Anthracite & Collieries Ltd.* [1950] Ch. 18, 22.

(9) *Re Athlumney* [1898] 2 Q.B. 547, 551, 552.

CIVIL SUIT.

Eugene Lye for the plaintiff.

K. K. Lam for the defendant.

Cur. Adv. Vult.

Yong J.: The plaintiff a tenant sues the defendent, his landlord for the recovery of the sum of $8,833 being the accumulated excess payments of rent from 15th November 1957 to 31st January 1966.

When the monthly rental was increased from $130 to $143, the plaintiff applied to the Rent Assessment Board to fix the "maximum recoverable rent" payable by him in respect of the premises. On February 15, 1966 the board made an order fixing the monthly rental at $50. On May 18, 1966 the plaintiff filed his claim in court. At the trial neither party called any evidence.

The plaintiff's claim is based on section 3(4) of the then relevant Control of Rent Ordinance, 1956, which reads:—

"A tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord."

The defence admitted that $8,833 was overpaid but contended that the plaintiff's claim was barred by the Limitation Ordinance 1953, section 6(1)(d) of which provides:—

"6 (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —

(d) actions to recover any sum recoverable by virtue of any written law..."

The defence maintained that the period of limitation ran from the date when each excess payment was made and the plaintiff contended that it ran from the date of the order of the board fixing the "maximum recoverable rent".

The question which this court has therefore to decide is: In an action for the recovery of the excess payments of rent where an order fixing the rent has been made by the Rent Assessment Board, whether the period of limitation commences to run from the date when each excess payment was made or from the date of the order of the board.

From the wording of section 6(1)(d) of the Limitation Ordinance 1953, it is clear that the period of six years will begin to run from the date when the cause of action accrues.

A cause of action normally accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed. (See *Halsbury's* Laws of England, 3rd Edn., pages 193 and 194).

In *Cooke* v. *Gill*[1] Brett J. defined "a cause of action" to mean "every fact which is material to be proved to entitle the plaintiff to succeed." This definition was approved by the Court of Appeal in *Read* v. *Brown*[2] in which Lord Esher M.R. in his grounds of judgment said that it included "every fact which it would be necessary for plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

After reviewing these and other authorities including *Barton* v. *North Staffordshire Rly. Co.*[3] and *Welch* v. *Bank of England*,[4] I have come to the conclusion that the period of limitation does not begin to run until there is a complete cause of action, and a cause of action is not complete when all the facts have not happened which are material to be proved to entitle the plaintiff to succeed. In the instant case, the plaintiff's cause of action is not complete until an order is obtained from the Rent Assessment Board fixing the amount of the rent legally recoverable under the Control of Rent Ordinance. I therefore hold that the period of limitation commenced to run only from the date of the order of the board.

Counsel for defence further contended that immediately upon such an order being made by the Rent Assessment Board, it has retrospective effect; that is, the order would operate from the date when each excess payment was made. He was however not able to cite any authority in support of his proposition.

I have always understood that it is a fundamental principle of law that no statute, penal or civil, shall be construed to have a retrospective operation unless such a construction clearly appears in the terms of the Act or arises by necessary and distinct implication. See *West* v. *Gwynne*,[5] *Re Snowdon Colliery Co. Ltd.*,[6] *Lauri* v. *Renad*,[7] *Re Welsh Anthracite and Collieries Ltd.*[8] In *Re Athlumney*[9] Wright J. said: —

"Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

In the instant case, the Control of Rent Ordinance 1956 contains no provision, express or implied, giving rise to any such retrospective operation.

The defence therefore fails on both points and I accordingly give judgment for the plaintiff in the sum of $8,833 with interest at 6% per annum from date of judgment to date of realisation and costs.

Judgment for the plaintiff.

Solicitors: *Eugene Lye & Co.; Oorjitham & Lam.*

YAU TIN KWONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) November 5, 1969]

[Singapore — Magistrate's Criminal Appeal No. 181 of 1969]

Import and Export — Importing prohibited goods — "Import" — Meaning of — Onus of proof on accused to show that he intended to take out prohibited goods on same vessel on which it was brought to Singapore — Quantum of proof — Issue estoppel — Whether available in criminal case — Validity of sanction — Sentence — Default sentence for non-payment of fine — Prohibition of Imports Order, 1950, order 2 (1) — Control of Imports and Exports Ordinance (Cap. 214), s. 2.

Customs and Excise — Prohibited goods — Concealing of — Customs Ordinance, 1960, s. 116 (1) (i).

Evidence — Onus — Balance of probabilities as test — Issue estoppel — Whether can be relied on in criminal case.

Criminal Law and Procedure — Prosecution — Sanction — Whether invalid by reason of officer signing having ceased to hold office.

This was an appeal against the decision of a district judge who found the appellant guilty of: (1) importing prohibited goods, to wit gold, an offence under order 2 (1) of the Prohibition of Imports Order, 1950; (2) concealing the prohibited goods, an offence under section 116 (1) (i) of the Customs Ordinance, 1960. On the appeal it was argued, *inter alia:* (1) the district judge had misdirected himself in law upon the burden of proof required of the appellant to discharge the onus placed upon him by law; (2) the district judge erred in law in admitting evidence that the appellant attempted to bribe the two customs officers when they were conducting a search of his cabin, which evidence was highly prejudicial to the appellant and should not have been admitted as the appellant had been acquitted on the charges under the Prevention of Corruption Ordinance which had earlier been withdrawn; (3) the sanction for the prosecution of the appellant was invalid as it was given by a person who had since signing it ceased to be an Assistant Comptroller of Customs.

Held, dismissing the appeal: (1) in this case it was clear from the grounds of decision the district judge correctly adopted the principle of the balance of probabilities as a test for deciding the onus on the appellant;

(2) assuming that an accused person can rely on issue estoppel in a criminal case, issue estoppel did not arise in